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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION
17

18 JOHN DOE #1 AND JOHN DOE #2,
19 Plaintiffs,
20 v.
21 TWITTER, INC.,
22 Defendants.
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Case No. 3:21-cv-00485-JCS

**DEFENDANT TWITTER, INC.'S MOTION
FOR STAY**

Hearing Date: November 19, 2021
Hearing Time: 9:30 a.m.
Judge: Honorable Joseph C. Spero

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE THAT, on November 19, 2021, at 9:30 a.m., or as soon thereafter as may be heard, Defendant Twitter, Inc. (“Twitter”) will and hereby does move this Court for an order staying these proceedings if the Court certifies the order denying in part Twitter’s motion to Dismiss (ECF No. 69, or the “Order”) for interlocutory appeal as requested in Twitter’s previously filed motion for leave to file motion for reconsideration or, in the alternative, motion for an order permitting interlocutory appeal of the Order pursuant to 28 U.S.C. § 1292(b) (the “Motion,” ECF No. 80).¹ Twitter further requests that any such stay should extend through final resolution of any appeal taken up by the Ninth Circuit. This motion is based on this Notice of Motion and Motion, Memorandum of Points and Authorities, the papers on file in this action, and such other and further evidence or argument that the Court may consider.

STATEMENT OF ISSUES TO BE DECIDED

Twitter respectfully submits, as detailed below, that the Court should stay the proceedings if the Court grants certification of the Order as requested in Twitter’s Motion and that any stay should extend until all further proceedings in the Ninth Circuit regarding Twitter’s request for interlocutory appeal are finally resolved because: (1) Twitter has made a “strong showing” that it is likely to succeed on the merits; (2) Twitter will be irreparably injured without a stay; (3) a stay will not substantially injure Plaintiffs; and (4) a stay is in the public interest.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

If the Court grants certification of the Order, Twitter seeks an order staying the proceedings in this case through final resolution of any appeal taken up by the Ninth Circuit. Courts, including this one, have not hesitated to issue stays when certifying questions for interlocutory appeal. The outcome should be no different here as Twitter meets each criteria that courts traditionally analyze for a stay in such circumstances. First, as explained in Twitter’s Motion, the Order raises

¹ In the event the Court grants Twitter’s motion for reconsideration attached as Exhibit A to the Motion, Twitter’s motion for a stay will be moot.

controlling, case dispositive questions of law that go directly to the merits of Plaintiffs' sole remaining claim, which strongly counsel in favor of a stay until these issues are finally resolved.

Second, as to the balance of harms, there is no doubt that Twitter will be irreparably injured if the case is not stayed and it must provide discovery and continue to defend itself against claims to which it is immune, or which are inadequately pled. Courts in the Northern District routinely find irreparable injury where, as here, but a party would otherwise have to continue to litigate despite appealing a case dispositive issue. As to Plaintiffs, this case is in its early stages and there is no threat of future or continuing harm; thus, any alleged injury to Plaintiffs resulting from a stay will be minimal and is, in any event, outweighed by the substantial harm to Twitter.

Third, the interests of judicial (and litigant) efficiency and preservation of resources favors a stay where, as here, the potential appeal may lead to final dismissal of the case. A stay also makes eminent sense here because one of the questions Twitter seeks to certify involves immunity from suit. CDA § 230 protects Defendants "not merely from ultimate liability, but from having to fight costly and protracted legal battles." *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1202 (N.D. Cal. 2009). Because the entire purpose of such immunity is to avoid subjecting the defendant to litigation in the first instance, CDA § 230 immunity should be definitively resolved before the parties engage in costly discovery.

As such, Twitter respectfully moves this Court to stay these proceedings if the Court grants certification of the Order as requested in Twitter's Motion. Twitter further requests that the Court stay proceedings pending final resolution of any appeal taken up by the Ninth Circuit.

II. FACTUAL BACKGROUND

Given the Court's familiarity with this case, Twitter provides an abbreviated background, focusing on the procedural issues and other Section 1591 and 1595 litigation relevant to this motion.²

A. Doe v. Twitter

On May 7, 2021, Twitter moved to dismiss Plaintiffs' First Amended Complaint ("FAC") under CDA § 230. ("MTD", ECF No. 48.) Twitter asserted that the carve-out from CDA § 230

² For a more comprehensive discussion of the background of the action leading up to this motion, see the Background section of Twitter's Motion. (ECF No. 80 at 3-8.)

immunity created by FOSTA (“Section 230(e)(5)(A)”), did not apply to Plaintiffs’ Section 1595 claims because Section 230(e)(5)(A) applies only where “the conduct underlying the claim constitutes a violation of [S]ection 1591,” and Plaintiffs did not adequately plead that Twitter’s conduct met that high bar. 47 U.S.C. § 230(e)(5)(A); *see* MTD at 1-2, 4-5, 18.

On August 19, 2021, the Court dismissed with prejudice all of Plaintiffs’ claims except for the Section 1595 beneficiary liability claim based on Twitter’s alleged violation of Section 1591(a)(2) (“Claim Two”). (ECF No. 69.) The Court held “that Plaintiffs’ Section 1595 claim against Twitter based on [an] alleged violation of Section 1591(a)(2) is not subject to the more stringent requirements that apply to criminal violations of that provision,” but instead “creates an exemption to Section 230 immunity for civil sex trafficking claims under Section 1591[.]” (Order at 40, 42.)

On October 4, 2021, Twitter filed a motion seeking leave to file a motion for reconsideration of the Order pursuant to Federal Rule of Civil Procedure 54(b) and Northern District of California Civil Local Rule 7-9 or, in the alternative, for an order certifying the Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Twitter attached to the Motion its proposed motion for reconsideration.

That same day, Plaintiffs served on Twitter a First Combined Set of Interrogatories, Requests for Production of Documents, and Requests for Admission” (the “Discovery Requests”). The Discovery Requests include twenty-three interrogatories, twenty-three requests for production, some with subparts, and nine requests for admission. Many are incredibly broad, and more than 20 Requests are unbounded by any time limits. (Nguyen Decl., ¶ 2.) Prior to this, the parties had informally agreed to stay discovery pending the Court’s order on Twitter’s motion to dismiss the FAC. (ECF No. 67 at 4-5.) In light of the Motion, Twitter’s counsel met and conferred with Plaintiffs’ counsel regarding a stay of discovery on October 7, 2021. Plaintiffs’ counsel again declined to agree to stay discovery or the proceedings pending the outcome of the Motion on October 15, 2021. (Nguyen Decl., ¶ 3.)

B. Other Section 1595 Cases Likely to Reach the Ninth Circuit

Numerous other courts within this Circuit (and outside it) are also currently grappling with how to interpret Section 230(e)(5)(A)’s scope, how to apply Section 1595 to ICS providers, and

1 how to apply the required elements to establish participation in a venture under both Sections 1595
 2 and 1591. The conflicting conclusions reached by the courts of this Circuit indicate that Twitter’s
 3 Motion raises serious questions going to the merits of this case that will likely be considered by the
 4 Ninth Circuit, if not because this Court certifies these questions, then because others likely will.

5 ***J.B. v. G6 Hospitality LLC (N.D. Cal.)***. As explained in Twitter’s Motion (Dkt. 80), on
 6 September 8, 2021, Judge Gilliam reconsidered his earlier ruling and dismissed the plaintiff’s
 7 complaint against Craigslist after concluding that “the most persuasive reading of [S]ection
 8 230(e)(5)(A) is that it provides an exemption from immunity for a section 1595 claim if, but only
 9 if, the defendant’s conduct amounts to a violation of section 1591.” *J.B. v. G6 Hospitality, LLC*,
 10 2021 WL 4079207, at *12 (N.D. Cal. Sept. 8, 2021). The plaintiff filed a motion to certify the
 11 order for interlocutory appeal on September 23, 2021, seeking certification of the proper
 12 interpretation of Section 230(e)(5)(A). (*J.B. v. G6 Hospitality LLC*, Case No. 19-cv-07848-HSG
 13 (N.D. Cal.), ECF No. 179.) Craigslist filed a statement of non-opposition. (*Id.*, ECF No. 183.)
 14 Since Twitter’s Motion (Dkt. 80), Judge Gilliam held a hearing on the plaintiff’s certification
 15 motion on October 5, 2021 and ordered the parties to meet and confer on options “to facilitate a
 16 potential appeal.” (*Id.*, ECF No. 187.) On October 12th, the parties filed a stipulation with the
 17 court proposing various methods to accomplish an interlocutory appeal. (*Id.*, ECF No. 188.)
 18 Pursuant to the parties’ stipulation entered by Judge Gilliam, the plaintiff has until 14 days after the
 19 final resolution by Judge Gilliam of her request for interlocutory review to amend her complaint
 20 against Craigslist (*id.*, ECF No. 184); thus, as to Craigslist, which at present has been dismissed
 21 from the action, the case is effectively stayed.

22 ***Doe v. Reddit (C.D. Cal.)***. On October 7, 2021, Judge Selna adhered to his tentative ruling
 23 described in Twitter’s Motion (Dkt. 80) and dismissed a complaint against Reddit, Inc. (“Reddit”),
 24 agreeing with Judge Gilliam’s interpretation of Section 230(e)(5)(A) in *J.B.*, and disagreeing with
 25 the Order. (Case No. 21-cv-00768-JVS-KES, ECF No. 58.) Judge Selna also reasoned that the
 26 plaintiffs failed to allege a violation of Section 1591 (and Section 1595) because they failed to
 27 adequately allege Reddit’s participation in a venture. (*Id.* at 12.) Judge Selna concluded that
 28 general allegations that Reddit enabled sex trafficking on its platform (as here) did not show a

1 “continuous business relationship” between Reddit and the specific traffickers who trafficked the
2 plaintiffs’ children. (*Id.* at 12.)

3 ***Doe v. MindGeek (C.D. Cal.)***. On September 23, 2021, Judge Carney determined that
4 Section 230(e)(5)(A) did not require a plaintiff to plead that a defendant violated section 1591. *Doe*
5 *v. Mindgeek USA Inc.*, 2021 WL 4167054, at *4-*7 (C.D. Cal. Sept. 3, 2021). On September 30,
6 2021, MindGeek filed a motion for reconsideration or, in the alternative, a motion to certify the
7 order for interlocutory appeal under Section 1292(b). (Case No. 21-cv-0338-CJC-ADS, ECF No.
8 73.) Plaintiff opposed. (*Id.*, ECF No. 74.) A hearing is calendared for November 1, 2021.

9 **III. ARGUMENT**

10 **A. Legal Standard**

11 It is well settled that a district court has the inherent power to grant a stay to control its
12 docket, conserve judicial resources, and provide for a just determination of the cases pending before
13 it. *See Landis v. North American Co.*, 299 U.S. 248, 253-54 (1936). Thus, courts may grant a stay
14 as to discovery, pretrial proceedings, and trial to achieve the desired result of conserving the
15 resources of the parties and the court. *Chronicle Publishing Co. v. National Broadcasting Co.*, 294
16 F.2d 744, 749 (9th Cir. 1961); *Bradshaw v. City of Los Angeles*, 2020 WL 2065007, at *4 (C.D.
17 Cal. Mar. 23, 2020) (staying case).

18 In the 28 U.S.C. § 1292(b) context, courts enjoy “broad discretion to decide whether a stay
19 is appropriate to ‘promote economy of time and effort for itself, for counsel, and for litigants.’”
20 *Ass’n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008)
21 (*quoting Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972)); *see also Mediterranean*
22 *Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (district court “may . . . find
23 it is efficient for its own docket and the fairest course for the parties” to enter a stay pending appeal).

24 In determining whether a stay is warranted, the district court should consider: (1) whether
25 the stay applicant has made a “strong showing” that it is likely to succeed on the merits; (2) whether
26 the applicant will be irreparably injured without a stay; (3) whether the stay will substantially injure
27 the other parties in the proceedings; and (4) whether a stay is in the public interest. *Silbersher v.*
28 *Allergan Inc.*, 2021 WL 292244, at *3 (N.D. Cal. Jan. 28, 2021) (Spero, J.) (citing *Leiva-Perez v.*

1 *Holder*, 640 F.3d 962, 964 (9th Cir. 2011)). “Courts apply these factors flexibly, taking a ‘sliding
 2 scale approach’ akin to the approach taken with respect to preliminary injunctions.” *Id.* Ninth
 3 Circuit district courts, including this one, regularly stay proceedings pending interlocutory appeal
 4 when the outcome of the appeal might “alter the direction of the current proceedings.” *Ass’n of*
 5 *Irrigated Residents*, 634 F. Supp. 2d at 1094; *Silbersher*, 2021 WL 292244, at *3 (staying
 6 proceedings pending interlocutory review under Section 1292(b) and any appeal that the Ninth
 7 Circuit might agree to consider); *Senne v. Kansas City Royals Baseball Corp.*, 2017 WL 5973487,
 8 at *3-*4 (N.D. Cal. May 5, 2017) (Spero, J.) (staying case pending interlocutory review).

9 **B. The Court Should Stay the Action Pending Resolution of Twitter’s Motion and**
 10 **Any Appeal the Ninth Circuit Agrees to Consider.**

11 **1. Twitter has made a strong showing that it is likely to succeed on the**
 12 **merits.**

13 In examining whether to stay a case pending appellate proceedings under Section 1292(b),
 14 the Ninth Circuit has “explained that the first factor, a ‘strong showing’ on the merits, does not
 15 require that a party seeking a stay must demonstrate that it is more likely than not to prevail on its
 16 appeal.” *Silbersher*, 2021 WL 292244, at *3 (citing *Leiva-Perez*, 640 F.3d 962 at 968). Instead,
 17 “it is enough that there are ‘serious questions going to the merits.’” *Id.* Twitter respectfully submits
 18 that a stay is clearly warranted under these standards, where the issues raised in the Order, including
 19 the scope of Section 230’s immunity carve-out in Section 230(e)(5)(A) and the interpretation of
 20 “participation in a venture” in 18 U.S.C. Sections 1591 and 1595, are novel, important and
 21 dispositive issues of law that present “serious questions going to the merits” of Plaintiffs’ sole
 22 remaining claim. *See Silbersher*, 2021 WL 292244, at *3.

23 *Silbersher* is particularly instructive. In that case, this Court found a “controlling question[]
 24 of law” as to which there was “substantial ground for difference of opinion” where its decision
 25 conflicted with another district court on the same dispositive issue. *See id.* at *2-3; *Mauia v.*
 26 *Petrochem Insulation, Inc.*, 2020 WL 1031911, at *3-4 (N.D. Cal. Mar. 3, 2020) (noting that three
 27 district courts reached conflicting conclusions on the same critical issue, granting certification of
 28 that issue for interlocutory appeal, and staying case). Here, this case clearly involves controlling
 questions of law that have given rise to differences of opinion: multiple courts within this Circuit

1 and outside of it—at least eight in total—have come to conflicting conclusions in the past year
 2 alone when faced with the question of an ICS provider’s immunity from Section 1595 claims and,
 3 as a result, there are multiple reconsideration and certification motions pending in district courts in
 4 this Circuit. Moreover, contrary to this Court’s conclusion, other district courts have found that a
 5 plaintiff is required to plead that an ICS provider had a “business relationship” with a trafficker in
 6 order to establish “participation in a venture” under Section 1595. (*See Doe v. Reddit, Inc.*, Case
 7 No. 21-cv-00768-JVS-KES, ECF No. 58 at 12.)

8 This Court also concluded in *Silbersher* that the legal questions raised by the interlocutory
 9 appeal weighed in favor of a stay because the plaintiff’s claim would be barred if the Court’s
 10 conclusion as to those issues were reversed on appeal. *Silbersher*, 2021 WL 292244, at *2-3. The
 11 same logic applies here. Were this Court or the Ninth Circuit to find in Twitter’s favor, it would
 12 be dispositive of Plaintiffs’ only remaining claim because—for the reasons discussed in Twitter’s
 13 motion to dismiss and Motion—Plaintiffs’ allegations do not meet the more stringent requirements
 14 of Section 1591 nor have they pleaded Twitter’s participation in a Section 1591 or 1595 venture.
 15 (*See* ECF Nos. 48 at 11-18; 80 at 3-5; 80-2 at 4-15.)

16 As such, the same concerns that counsel in favor of reconsidering or permitting immediate
 17 appeal of the Order support the imposition of a stay: the standard for triggering Section 230’s
 18 immunity carve-out and the statutory interpretation of “participation in a venture” are controlling,
 19 pure questions of law for which there is reasonable grounds for difference of opinion and resolution
 20 of which will materially advance (and likely terminate) this litigation. *See, e.g., Mauia*, 2020 WL
 21 1031911, at *4 (N.D. Cal. Mar. 3, 2020) (“[T]his [c]ourt’s certification for interlocutory review
 22 becomes illogical if the parties continue to litigate before this [c]ourt [plaintiff’s] remaining claims,
 23 which claims would be subject to dismissal if the Ninth Circuit reverse.”); *Canela v. Costco*
 24 *Wholesale Corp.*, 2018 WL 3008532, at *4 (N.D. Cal. June 15, 2018) (noting that refusing a stay
 25 but granting certification would result in “much of the efficiency and benefit of an interlocutory
 26 appeal [] be[ing] lost”); *see also Senne*, 2017 WL 5973487, at *3 (granting motion to certify
 27 because there was substantial ground for difference of opinion due to “the dearth of relevant case
 28 law and tension in the relevant legal standards” and granting motion to stay on the same ground).

1 **2. The irreparable harm to Twitter resulting from failure to stay the case**
 2 **outweighs any harm or prejudice to Plaintiffs.**

3 The second and third factors also support a stay here. These factors address the “relative
 4 harms to the parties of entering a stay as opposed to allowing the case to move forward in the trial
 5 court.” *Silbersher*, 2021 WL 292244, at *3. As to Twitter, it faces significant and unnecessary
 6 harm should it be required to proceed with this litigation before the controlling question of its
 7 immunity under CDA § 230 is finally decided. Immunity under CDA § 230 protects Defendants
 8 “not merely from ultimate liability, but from having to fight costly and protracted legal battles.”
 9 *Goddard*, 640 F. Supp. 2d at 1202. Thus, subjecting Twitter to costly, invasive, and protracted
 10 litigation now before the Ninth Circuit can (and should) resolve the important question of the scope
 11 of CDA § 230 would undermine the entire purpose of the Congressional grant of immunity through
 12 CDA § 230 in the first place. *See Levitt v. Yelp! Inc.*, 2011 WL 5079526, at *6, *8–9 (N.D. Cal.
 13 Oct. 26, 2011), *aff’d*, 765 F.3d 1123 (9th Cir. 2014). And because “[c]lose cases . . . must be
 14 resolved in favor of immunity,” Twitter respectfully submits that the Court should not allow
 15 Plaintiffs to take discovery unless and until it is finally decided that their Section 1595 beneficiary
 16 liability claim based on Twitter’s alleged violation of Section 1591(a)(2) survives. *Id.*

17 Moreover, courts have stayed cases where reversal of the certified order would terminate
 18 the case or eliminate claims, making any time and expense on discovery and motion practice
 19 unnecessary. In *Silbersher*, this Court found that the “substantial harm” suffered by the party
 20 requesting the stay caused by “going forward in the trial court . . . will result in burdensome and
 21 expensive cost that may be needless” and outweighs any prejudice to plaintiffs from a delay
 22 pending appeal. *Id.* at *3. Similarly, in *Senne*, the Court concluded that the harm to defendants
 23 who “will have devoted very substantial time and resources on the litigation, particularly with
 24 respect to the completion of discovery, dispositive motions and trial preparation” outweighs any
 25 prejudice to plaintiffs “arising from the delay associated with the entry of a stay.” *Senne*, 2017 WL
 26 5973487, at *3.

27 Here, the same considerations animating the stays in *Silbersher* and *Senne* are present.
 28 Failure to stay this case pending resolution of Twitter’s Motion and any subsequent appeal

1 considered by the Ninth Circuit on either or both of the questions Twitter seeks to certify will result
 2 in “burdensome and expensive discovery” and potentially summary judgment and trial preparation
 3 that will have been unnecessary if the Ninth Circuit determines Twitter is immune from or not liable
 4 for Plaintiffs’ only remaining claim. *Id.*

5 Plaintiffs will also face no substantial injury if this case is stayed pending resolution of
 6 Twitter’s Motion. First, this litigation is in early stages and no trial date has been set. *See*
 7 *Silbersher*, 2021 WL 292244, at *3 (prejudice to plaintiff outweighed by harm to defendant if
 8 caused to proceed while order on motion to dismiss is on appeal). Second, staying the case presents
 9 no risk that documentary evidence will be lost because relevant evidence has been preserved and
 10 immediate appeal will materially advance the litigation such that it will be less likely that memories
 11 and knowledge of any percipient witnesses will fade or be lost. *See City of Los Angeles v. Nat’l*
 12 *Union Fire Ins. Co. of Pittsburgh, PA*, 2014 WL 12573322, at *11 (C.D. Cal. Apr. 29, 2014)
 13 (granting stay and certifying for interlocutory appeal because “[t]he risk of faded memories is an
 14 even greater reason the Ninth Circuit should decide this controlling, novel legal issue prior to trial,
 15 lest the parties have to return after a reversal on appeal post final adjudication”). And finally,
 16 Twitter has already removed the Videos from its platform; therefore, a temporary stay presents no
 17 possibility of future harm to Plaintiffs. *Asis Internet Servs. v. Active Response Grp.*, 2008 WL
 18 4279695, at *4 (N.D. Cal. Sept. 16, 2008) (stay appropriate while order pending appeal where, *inter*
 19 *alia*, plaintiffs’ alleged harm had already occurred).

20 **3. A stay is in the public interest.**

21 The final factor, judicial efficiency, also favors entry of a stay. Northern District courts
 22 have held that the “public interest lies” in a court “avoid[ing] wasting resources on . . . litigation
 23 which might be changed in scope on appeal.” *Gray v. Golden Gate Nat. Recreational Area*, 2011
 24 WL 6934433, at *3 (N.D. Cal. Dec. 29, 2011) (noting that “a court should not waste its resources
 25 on matters which did not belong before it in the first place”). In *Silbersher*, for example, this Court
 26 concluded that “it is in the public interest to stay the case while it is on appeal because doing so is
 27 likely to save judicial resources.” 2021 WL 292244, at *3.

28 Proceeding on Plaintiffs’ claims, including ruling on discovery disputes, summary

1 judgment motions, and trial, will be a significant waste of judicial resources if the Court certifies
 2 the Order and the Ninth Circuit determines Section 230(e)(5)(A)'s immunity carve-out is only
 3 triggered if Twitter's conduct violated Section 1591 and orders dismissal. Likewise, if the Ninth
 4 Circuit remands having reversed on either or both questions regarding Section 230(e)(5)(A)'s scope
 5 and "participation in a venture" under Section 1595, that will necessitate the entire case being
 6 relitigated according to higher pleading and evidentiary burdens. Courts in the Northern District
 7 routinely conclude that this factor weighs in favor of a stay under similar circumstances. *E.g.*,
 8 *Senne*, 2017 WL 5973487, at *4 (granting stay because the Ninth Circuit's decision on appeal might
 9 make it "necessary to decide a second round of dispositive motions and conduct a second trial");
 10 *Silbersher*, 2021 WL 292244, at *3 (granting stay "because going forward in the trial court will
 11 result in burdensome and expensive discovery and this cost may be needless"); *Canela*, 2018 WL
 12 3008532, at *4.

13 Moreover, staying the case pending final resolution of Twitter's Motion will give the Ninth
 14 Circuit an opportunity to provide the Circuit-wide clarity necessary for district courts to adjudicate
 15 these claims. This will result in judicial efficiency as there are currently at least three motions for
 16 interlocutory appeal pending before different district courts in this Circuit on this precise issue: *JB*,
 17 *Reddit*, and this action. Thus, both judicial economy and the efficient use of the parties' resources
 18 militate in favor of staying these proceedings until the certification motions in this Court and others
 19 in this Circuit are decided and the Ninth Circuit resolves any appeal on these issues.

20 **IV. CONCLUSION**

21 To avoid potentially needless expenditures of resources by the parties and this Court, the
 22 Court should stay these proceedings if the Court certifies the Order and until either (1) the Ninth
 23 Circuit declines the petition for discretionary review; or (2) if the Ninth Circuit grants the petition
 24 for review, until thirty (30) calendar days after that court returns the mandate.

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Dated: October 15, 2021

COOLEY LLP

By: /s/ Michael G. Rhodes
Michael G. Rhodes

*Attorneys for Defendant
Twitter, Inc.*